
Attachment 6
AFRPA Response to U.S. Environmental Protection Agency IX and
State of California, Regional Water Quality Control Board (RWQCB),
Lahontan Region Comments on
Draft Finding of Suitability to Transfer (FOST)
for Subparcel D-8
Former George Air Force Base, Victorville, San Bernardino County

EPA Comments dated September 27, 2006

Comment 1. If there is no groundwater contamination at this site, the FOST should clearly state this information. Additionally, EPA believes a deed restriction is needed to prohibit pumping of groundwater for preventing adverse impacts on the adjacent groundwater contamination plumes.

AFRPA Response: The FOST has been rewritten to clearly state that no groundwater contamination is located under this property. Additionally, a deed restriction to prohibit pumping of groundwater for any purpose other than monitoring and sampling will be put in place.

Comment 2. Section 4. Because lead based paint (LBP), Pesticides (Dieldrin) and Asbestos is present on the parcel, and notifications to the transferee are required, the property should not be classified as ECC 1. We recommend an ECC 3, which is defined as areas where contamination is present, but below action levels.

AFRPA Response: Under CERCLA 103, the Air Force does not believe that there has been a CERCLA release or disposal of LBP, asbestos, and pesticides and considers the property environmentally ready to transfer under Environmental Condition Category (ECC) 1. The text of the FOST has not been changed as a result of this comment.

Comment 3. Section 5. The text states that “factors that require either deed restrictions or specific notification are identified...” but the AF does not propose any deed restrictions. If no deed restrictions will in fact be included, the AF should clarify that in this paragraph. And, for each subsection in Section 5 that proposes a deed notification or covenant, the AF should provide that draft language.

AFRPA Response: Per EPA’s recommendations, deed restrictions for groundwater will be included. Draft language for deed notification, restrictions, or covenants will be provided to regulators upon the completion of the draft Deed. The LBP language in Sections 5.6 and 5.7 is the standard AFRPA language and was not changed. As stated in the FOST, the deed will include a grantee covenant that the grantee and successors acknowledge and accept responsibility for managing LBP in accordance with all applicable laws and regulations.

Comment 4. Section 5.6. The FOST should have a deed restriction for lead based paint (LBP) that prohibits any residential reuse, unless a LBP risk assessment and any required abatement is completed prior to residential use.

AFRPA Response: The Air Force procedure for LBP at facilities other than housing and child support facilities requires notification of the possible presence of LBP, and the federal deed will contain a notice of the possible presence of LBP and the statement that the transferee is responsible for compliance with all applicable rules and regulations.

Comment 5. Section 5.9. Should “The Gas Company” be changed to “Southern California Gas Company”?

AFRPA Response: “The Gas Company” has been changed to “Southern California Gas Company”.

Comment 6. Section 5.10. The last sentence beginning with “This Factor requires” is confusing. Please explain what is required, by whom, and what specifically the AF is planning to do.

AFRPA Response: This is standard Air Force language that explains that a notification will be included in the Deed for the Transferee to comply with all applicable discharge permits and for the Transferee to release the liability to the Air Force.

Comment 7. Section 5.12, 1st Paragraph. The text inaccurately refers to Section 107(i) of CERCLA when it states termiticide “was applied in accordance with regulations (42 USC § 9607 (i) and Federal Insecticide, Fungicide and Rodenticide Act [FIFRA]).” Termiticide cannot be applied “in accordance” with Section 107 (i) because that statutory provision does not include any direction for the application of pesticides. Further Section 107 (i) does not exempt the application of pesticide from the definition of a “release” under CERCLA but only provides that, in general, EPA may not recover response cost resulting from pesticide application. EPA has consistently maintained that Section 107 (i) does not limit the authority or obligation of the Air Force to respond to pesticide-related contamination. It is our position that where contamination resulting from pesticide application poses a risk to human health or the environment, such contamination must be addressed by the Air Force. Accordingly, the AF should conduct adequate soil samplings to evaluate the risks from pesticides.

AFRPA Response: Reference 42 USC § 9607(i) has been removed from this sentence. The Air Force position is that the Dieldrin found in groundwater and soil is not considered a CERCLA release in accordance with 42 USC Section 103 as it has met the following requirement for exemption as a release: “Application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act.” The application of the termiticide around housing was in accordance with the FIFRA requirements. The Air Force will continue to evaluate the groundwater; however, this should not affect the property transfer.

Comment 8. Section 5.12.2nd Paragraph. The text states that “institutional Controls will be incorporated in the deed as grantee covenants and in a state land use covenant (SLUC),” but it should also state what restrictions will be implemented.

AFRPA Response: The following sentences have been added to this paragraph:
“Grantee covenants and agrees that it will not use the Property for residential purposes, hospitals for human care, public or private schools for persons under 18 years of age, or day care centers for children. Grantee covenants and agrees that it will not conduct or allow others to conduct activities that limit access to the site for inspections.”

Comment 9. Section 6. The Regional Water Quality Control Board should be mentioned in this section.

AFRPA Response: The Regional Water Quality Control Board has been included in this section.

Comment 10. Section 8. The FOST is missing the required covenants for property transfer. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires a covenant indicating that all remedial action necessary to protect human health and the environment, with respect to any hazardous substances remaining on the Property, has been taken prior to transfer of such property by deed (see CERCLA § 120 (h)(3)(A)(ii)(I)). Accordingly, replace the entire Section 8 with following suggested language:

“The deed proposal has been adequately assessed and evaluated for: (a) the presence of hazardous substances and contamination on the Property, (b) environmental impacts anticipated from the intended use for the Property, (c) adequacy of use restrictions and notifications to ensure that the intended use is consistent with protection of human health and the environment, and (d) adequate notice of disclosures, including those required by CERCLA 120(h). The anticipated future use of this Property does not present a current or future risk to human health or the environment subject to inclusion and compliance with the appropriate restrictions on use and disclosures as addressed above. The following covenant CERCLA language will be included in the Deed:

- CERCLA 120(h)(3)(A)(ii)(I) warranting that all remedial action under CERCLA necessary to protect human health and the environment with respect to hazardous substances remaining on the Property has been taken before the date of transfer.
- CERCLA 120(h)(3)(A)(ii)(II) warranting that any remedial action under CERCLA found to be necessary after the date of transfer with respect to such hazardous substances remaining on the property shall be conducted by the United States.
- CERCLA 120(h)(3)(A)(iii) granting the United States access to the Property in any case in which remedial action or corrective action is found to be necessary after the date of transfer.

The conditions of CERCLA Section 120(h) have been satisfied. Therefore, the property is suitable for transfer.”

AFRPA Response: Section 8 language will be revised to reflect above comments.

RWQCB Comments dated September 19, 2006

Comment 1: Section 5 (Deed Restrictions)-The report, page 2, indicates that no deed restrictions or notifications to the transferee are required but goes on to state that land use covenants will be included in the deed to state that the Air Force will be responsible for cleanup of hazardous substances released prior to the transfer. Please clarify the difference between land use covenants and deed restrictions.

Water Board staff believes that the deed must include restrictions on the pumping of groundwater unless it has been established by the Air Force that such pumping will not adversely affect adjacent plumes of groundwater contamination and concurrence has been obtained from the regulatory agencies. These deed restrictions should continue to run with the land until the land use covenant is revised to remove the requirement for regulatory agency approval. Indicate that if pumping wells are installed, sentry monitoring wells will be installed between the plume and the well.

AFRPA Response: Land use covenants and deed restrictions are substantively the same. The language within the Section is the standard Air Force language. Specifics as related to land use covenants and deed restrictions will be included in the Deed. Restrictions on the pumping of groundwater will be included in the FOST and Deed to minimize migration of groundwater contamination.

Comment 2: Section 5.10 (Sanitary Sewer Systems)-The document indicates that the sanitary sewer collection system has been transferred to the Victor Valley Wastewater Reclamation Authority (VWVRA). Please verify this information. Water Board staff understands that the system was transferred to the City of Victorville, one of VWVRA's member entities, and wastewater treatment is provided at VWVRA's regional plants.

AFRPA Response: This section has been rewritten to indicate that the sanitary sewer collection system has been transferred to the City of Victorville.

Comment 3: Section 5.12 (Dieldrin)-You claim on page 6 of the draft FOST that "*covenants will be included in the Deed to protect human health and the environment from the slight detections of Dieldrin in groundwater adjacent to the Property.*" Please note that a deed alone cannot protect human health and the environment from the Dieldrin in groundwater as stated in the report. Please clarify what actions the Air Force will take, how the proposed deed covenant will be worded, and how the Air Force will enforce it after the property transfer.

AFRPA Response: Section 5.12, 3rd Sentence: "*covenants will be included in the Deed to protect human health and the environment from the slight detections of Dieldrin in groundwater adjacent to the Property*" has been replaced with "The Transferee will be advised through the supporting SEBS of the location of Dieldrin detections. The Air Force will continue to evaluate and monitor the Dieldrin that has been identified in the groundwater adjacent to the Property." Additionally, the Deed language will be provided.

Comment 4: Section 5.12 (Dieldrin) - You claim on page 6 of the Draft FOST that Dieldrin in soil and groundwater does "not require removal or response" due to the low concentrations and

because the application was in accordance with federal law regulating insecticides. Please note that because the Dieldrin is detected above natural background concentrations (which are non-detectable) then it is subject to the investigation and response action requirements of the following State of California requirements.

- a. Section 13304 of the California Water Code;
- b. Section III.G. of State Board Resolution 92-49 (Policies and Procedures for the Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304;
- c. Sections 1 and 2 of State Board Resolution 68-16 (Statement of Policy With Respect to Maintaining High Quality of Waters in California); and the
- d. Municipal Beneficial Use Designation for the Upper Mojave River Valley (Department of Water Resources Basin No. 6-42, page 2-46), Non-Degradation Objective (page 3-2), Water Quality Objectives for Groundwater (page 3-12), References to Toxicity (page 3-15) and Soil and Groundwater Cleanup Levels (pages 4.2-4 & 4.2-5) of the Water Quality Control Plan for the Lahontan Region (Basin Plan).

Note also that the State of California Department of Health Services has established an Action Level for Dieldrin of 0.002 µg/L (parts per billion). The Action Level is below the detected groundwater concentrations for Dieldrin near the parcel, as described below. Please clarify in the report that the Air Force is continuing investigation and response actions to comply with the above requirements.

AFRPA Response: Section 5.12 has been revised to include a statement that the Air Force will continue to evaluate the Dieldrin in groundwater.

Comment 5: The Supplemental Environmental Baseline Survey (page 4) states that “groundwater sample results down gradient of this property were non detect in November 2002.” This is incorrect. Figure 3-35 of the Final 2004 Annual Basewide Ground Water Monitoring Report, Operable Units 1,2,3 and the Pesticide Area of Concern shows Dieldrin in well NZ-123, down gradient of the parcel, at 0.013 µg/L. Please correct the report.

AFRPA Response: The SEBS has been revised to reflect the correct groundwater flow direction from “eastwardly” to “northeastwardly.” Based on the direction of the groundwater flow, monitoring well NZ-120 is downgradient of the parcel and the sample result for this MW was 0.0008 µg/L.

Comment 6: Although Dieldrin in groundwater is still being investigated, the Air Force believes it was used as an insecticide applied to soils beneath and adjacent to buildings during their construction. Although no monitoring wells have been installed near the hospital, the report should indicate it is likely that the Dieldrin may be present in groundwater beneath the parcel.

AFRPA Response: Based on the October 2004 groundwater monitoring results and the fact that the groundwater flow direction is more of a northeastwardly direction than an eastwardly direction, it is unlikely that Dieldrin may be present in the groundwater beneath the parcel. Upgradient groundwater monitoring results were below 0.01 µg/L at MW NZ-119, and downgradient of the parcel, monitoring well NZ-120 results were

0.0008 µg/L. The SEBS has been revised to reflect that the groundwater flow direction is more of a northeastwardly direction than an eastwardly direction.

Comment 7: Please provide a copy of the deed language when available.

AFRPA Response: It will be provided.

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